

107TH CONGRESS
1ST SESSION

H. R. 2269

IN THE SENATE OF THE UNITED STATES

NOVEMBER 16, 2001

Received; read twice and referred to the Committee on Finance

AN ACT

To amend title I of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to promote the provision of retirement investment advice to workers managing their retirement income assets.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Retirement Security
5 Advice Act of 2001”.

6 **SEC. 2. PROHIBITED TRANSACTION EXEMPTION FOR THE**
7 **PROVISION OF INVESTMENT ADVICE.**

8 (a) AMENDMENTS TO THE EMPLOYEE RETIREMENT
9 INCOME SECURITY ACT OF 1974.—

10 (1) EXEMPTION FROM PROHIBITED TRANS-
11 ACTIONS.—Section 408(b) of the Employee Retire-
12 ment Income Security Act of 1974 (29 U.S.C.
13 1108(b)) is amended by adding at the end the fol-
14 lowing new paragraph:

15 “(14)(A) Any transaction described in subpara-
16 graph (B) in connection with the provision of invest-
17 ment advice described in section 3(21)(A)(ii), in any
18 case in which—

19 “(i) the investment of assets of the plan is
20 subject to the direction of plan participants or
21 beneficiaries,

22 “(ii) the advice is provided to the plan or
23 a participant or beneficiary of the plan by a fi-
24 ducuary adviser in connection with any sale, ac-
25 quisition, or holding of a security or other prop-

1 erty for purposes of investment of plan assets,
2 and

3 “(iii) the requirements of subsection (g)
4 are met in connection with the provision of the
5 advice.

6 “(B) The transactions described in this sub-
7 paragraph are the following:

8 “(i) the provision of the advice to the plan,
9 participant, or beneficiary;

10 “(ii) the sale, acquisition, or holding of a
11 security or other property (including any lend-
12 ing of money or other extension of credit associ-
13 ated with the sale, acquisition, or holding of a
14 security or other property) pursuant to the ad-
15 vice; and

16 “(iii) the direct or indirect receipt of fees
17 or other compensation by the fiduciary adviser
18 or an affiliate thereof (or any employee, agent,
19 or registered representative of the fiduciary ad-
20 viser or affiliate) in connection with the provi-
21 sion of the advice or in connection with a sale,
22 acquisition, or holding of a security or other
23 property pursuant to the advice.”.

1 (2) REQUIREMENTS.—Section 408 of such Act
2 is amended further by adding at the end the fol-
3 lowing new subsection:

4 “(g) REQUIREMENTS RELATING TO PROVISION OF
5 INVESTMENT ADVICE BY FIDUCIARY ADVISERS.—

6 “(1) IN GENERAL.—The requirements of this
7 subsection are met in connection with the provision
8 of investment advice referred to in section
9 3(21)(A)(ii), provided to an employee benefit plan or
10 a participant or beneficiary of an employee benefit
11 plan by a fiduciary adviser with respect to the plan
12 in connection with any sale, acquisition, or holding
13 of a security or other property for purposes of in-
14 vestment of amounts held by the plan, if—

15 “(A) in the case of the initial provision of
16 the advice with regard to the security or other
17 property by the fiduciary adviser to the plan,
18 participant, or beneficiary, the fiduciary adviser
19 provides to the recipient of the advice, at a time
20 reasonably contemporaneous with the initial
21 provision of the advice, a written notification
22 (which may consist of notification by means of
23 electronic communication)—

24 “(i) of all fees or other compensation
25 relating to the advice that the fiduciary ad-

1 viser or any affiliate thereof is to receive
2 (including compensation provided by any
3 third party) in connection with the provi-
4 sion of the advice or in connection with the
5 sale, acquisition, or holding of the security
6 or other property,

7 “(ii) of any material affiliation or con-
8 tractual relationship of the fiduciary ad-
9 viser or affiliates thereof in the security or
10 other property,

11 “(iii) of any limitation placed on the
12 scope of the investment advice to be pro-
13 vided by the fiduciary adviser with respect
14 to any such sale, acquisition, or holding of
15 a security or other property,

16 “(iv) of the types of services provided
17 by the fiduciary advisor in connection with
18 the provision of investment advice by the
19 fiduciary adviser, and

20 “(v) that the adviser is acting as a fi-
21 duciary of the plan in connection with the
22 provision of the advice,

23 “(B) the fiduciary adviser provides appro-
24 priate disclosure, in connection with the sale,
25 acquisition, or holding of the security or other

1 property, in accordance with all applicable secu-
2 rities laws,

3 “(C) the sale, acquisition, or holding oc-
4 curs solely at the direction of the recipient of
5 the advice,

6 “(D) the compensation received by the fi-
7 duciary adviser and affiliates thereof in connec-
8 tion with the sale, acquisition, or holding of the
9 security or other property is reasonable, and

10 “(E) the terms of the sale, acquisition, or
11 holding of the security or other property are at
12 least as favorable to the plan as an arm’s
13 length transaction would be.

14 “(2) STANDARDS FOR PRESENTATION OF IN-
15 FORMATION.—The notification required to be pro-
16 vided to participants and beneficiaries under para-
17 graph (1)(A) shall be written in a clear and con-
18 spicuous manner and in a manner calculated to be
19 understood by the average plan participant and shall
20 be sufficiently accurate and comprehensive to rea-
21 sonably apprise such participants and beneficiaries
22 of the information required to be provided in the no-
23 tification.

24 “(3) EXEMPTION CONDITIONED ON CONTINUED
25 AVAILABILITY OF REQUIRED INFORMATION ON RE-

1 QUEST FOR 1 YEAR.—The requirements of para-
2 graph (1)(A) shall be deemed not to have been met
3 in connection with the initial or any subsequent pro-
4 vision of advice described in paragraph (1) to the
5 plan, participant, or beneficiary if, at any time dur-
6 ing the provision of advisory services to the plan,
7 participant, or beneficiary, the fiduciary adviser fails
8 to maintain the information described in clauses (i)
9 through (iv) of subparagraph (A) in currently accu-
10 rate form and in the manner described in paragraph
11 (2) or fails—

12 “(A) to provide, without charge, such cur-
13 rently accurate information to the recipient of
14 the advice no less than annually,

15 “(B) to make such currently accurate in-
16 formation available, upon request and without
17 charge, to the recipient of the advice, or

18 “(C) in the event of a material change to
19 the information described in clauses (i) through
20 (iv) of paragraph (1)(A), to provide, without
21 charge, such currently accurate information to
22 the recipient of the advice at a time reasonably
23 contemporaneous to the material change in in-
24 formation.

1 “(4) MAINTENANCE FOR 6 YEARS OF EVIDENCE
2 OF COMPLIANCE.—A fiduciary adviser referred to in
3 paragraph (1) who has provided advice referred to in
4 such paragraph shall, for a period of not less than
5 6 years after the provision of the advice, maintain
6 any records necessary for determining whether the
7 requirements of the preceding provisions of this sub-
8 section and of subsection (b)(14) have been met. A
9 transaction prohibited under section 406 shall not be
10 considered to have occurred solely because the
11 records are lost or destroyed prior to the end of the
12 6-year period due to circumstances beyond the con-
13 trol of the fiduciary adviser.

14 “(5) EXEMPTION FOR PLAN SPONSOR AND CER-
15 TAIN OTHER FIDUCIARIES.—

16 “(A) IN GENERAL.—Subject to subpara-
17 graph (B), a plan sponsor or other person who
18 is a fiduciary (other than a fiduciary adviser)
19 shall not be treated as failing to meet the re-
20 quirements of this part solely by reason of the
21 provision of investment advice referred to in
22 section 3(21)(A)(ii) (or solely by reason of con-
23 tracting for or otherwise arranging for the pro-
24 vision of the advice), if—

1 “(i) the advice is provided by a fidu-
2 ciary adviser pursuant to an arrangement
3 between the plan sponsor or other fidu-
4 ciary and the fiduciary adviser for the pro-
5 vision by the fiduciary adviser of invest-
6 ment advice referred to in such section,

7 “(ii) the terms of the arrangement re-
8 quire compliance by the fiduciary adviser
9 with the requirements of this subsection,
10 and

11 “(iii) the terms of the arrangement
12 include a written acknowledgment by the
13 fiduciary adviser that the fiduciary adviser
14 is a fiduciary of the plan with respect to
15 the provision of the advice.

16 “(B) CONTINUED DUTY OF PRUDENT SE-
17 LECTION OF ADVISER AND PERIODIC REVIEW.—

18 Nothing in subparagraph (A) shall be construed
19 to exempt a plan sponsor or other person who
20 is a fiduciary from any requirement of this part
21 for the prudent selection and periodic review of
22 a fiduciary adviser with whom the plan sponsor
23 or other person enters into an arrangement for
24 the provision of advice referred to in section
25 3(21)(A)(ii). The plan sponsor or other person

1 who is a fiduciary has no duty under this part
2 to monitor the specific investment advice given
3 by the fiduciary adviser to any particular recipi-
4 ent of the advice.

5 “(C) AVAILABILITY OF PLAN ASSETS FOR
6 PAYMENT FOR ADVICE.—Nothing in this part
7 shall be construed to preclude the use of plan
8 assets to pay for reasonable expenses in pro-
9 viding investment advice referred to in section
10 3(21)(A)(ii).

11 “(6) DEFINITIONS.—For purposes of this sub-
12 section and subsection (b)(14)—

13 “(A) FIDUCIARY ADVISER.—The term ‘fi-
14 duciary adviser’ means, with respect to a plan,
15 a person who is a fiduciary of the plan by rea-
16 son of the provision of investment advice by the
17 person to the plan or to a participant or bene-
18 ficiary and who is—

19 “(i) registered as an investment ad-
20 viser under the Investment Advisers Act of
21 1940 (15 U.S.C. 80b–1 et seq.) or under
22 the laws of the State in which the fiduciary
23 maintains its principal office and place of
24 business,

1 “(ii) a bank or similar financial insti-
2 tution referred to in section 408(b)(4),

3 “(iii) an insurance company qualified
4 to do business under the laws of a State,

5 “(iv) a person registered as a broker
6 or dealer under the Securities Exchange
7 Act of 1934 (15 U.S.C. 78a et seq.),

8 “(v) an affiliate of a person described
9 in any of clauses (i) through (iv), or

10 “(vi) an employee, agent, or registered
11 representative of a person described in any
12 of clauses (i) through (v) who satisfies the
13 requirements of applicable insurance,
14 banking, and securities laws relating to the
15 provision of the advice.

16 “(B) AFFILIATE.—The term ‘affiliate’ of
17 another entity means an affiliated person of the
18 entity (as defined in section 2(a)(3) of the In-
19 vestment Company Act of 1940 (15 U.S.C.
20 80a–2(a)(3))).

21 “(C) REGISTERED REPRESENTATIVE.—
22 The term ‘registered representative’ of another
23 entity means a person described in section
24 3(a)(18) of the Securities Exchange Act of
25 1934 (15 U.S.C. 78c(a)(18)) (substituting the

1 entity for the broker or dealer referred to in
 2 such section) or a person described in section
 3 202(a)(17) of the Investment Advisers Act of
 4 1940 (15 U.S.C. 80b–2(a)(17)) (substituting
 5 the entity for the investment adviser referred to
 6 in such section).”.

7 (b) AMENDMENTS TO THE INTERNAL REVENUE
 8 CODE OF 1986.—

9 (1) EXEMPTION FROM PROHIBITED TRANS-
 10 ACTIONS.—Subsection (d) of section 4975 of the In-
 11 ternal Revenue Code of 1986 (relating to exemptions
 12 from tax on prohibited transactions) is amended—

13 (A) in paragraph (14), by striking “or” at
 14 the end;

15 (B) in paragraph (15), by striking the pe-
 16 riod at the end and inserting “; or”; and

17 (C) by adding at the end the following new
 18 paragraph:

19 “(16) any transaction described in subsection
 20 (f)(7)(A) in connection with the provision of invest-
 21 ment advice described in subsection (e)(3)(B), in
 22 any case in which—

23 “(A) the investment of assets of the plan
 24 is subject to the direction of plan participants
 25 or beneficiaries,

1 “(B) the advice is provided to the plan or
 2 a participant or beneficiary of the plan by a fi-
 3 duciary adviser in connection with any sale, ac-
 4 quisition, or holding of a security or other prop-
 5 erty for purposes of investment of plan assets,
 6 and

7 “(C) the requirements of subsection
 8 (f)(7)(B) are met in connection with the provi-
 9 sion of the advice.”.

10 (2) ALLOWED TRANSACTIONS AND REQUIRE-
 11 MENTS.—Subsection (f) of such section 4975 (relat-
 12 ing to other definitions and special rules) is amended
 13 by adding at the end the following new paragraph:

14 “(7) PROVISIONS RELATING TO INVESTMENT
 15 ADVICE PROVIDED BY FIDUCIARY ADVISERS.—

16 “(A) TRANSACTIONS ALLOWABLE IN CON-
 17 NECTION WITH INVESTMENT ADVICE PROVIDED
 18 BY FIDUCIARY ADVISERS.—The transactions re-
 19 ferred to in subsection (d)(16), in connection
 20 with the provision of investment advice by a fi-
 21 duciary adviser, are the following:

22 “(i) the provision of the advice to the
 23 plan, participant, or beneficiary;

24 “(ii) the sale, acquisition, or holding
 25 of a security or other property (including

1 any lending of money or other extension of
2 credit associated with the sale, acquisition,
3 or holding of a security or other property)
4 pursuant to the advice; and

5 “(iii) the direct or indirect receipt of
6 fees or other compensation by the fiduciary
7 adviser or an affiliate thereof (or any em-
8 ployee, agent, or registered representative
9 of the fiduciary adviser or affiliate) in con-
10 nection with the provision of the advice or
11 in connection with a sale, acquisition, or
12 holding of a security or other property pur-
13 suant to the advice.

14 “(B) REQUIREMENTS RELATING TO PROVI-
15 SION OF INVESTMENT ADVICE BY FIDUCIARY
16 ADVISERS.—The requirements of this subpara-
17 graph (referred to in subsection (d)(16)(C)) are
18 met in connection with the provision of invest-
19 ment advice referred to in subsection (e)(3)(B),
20 provided to a plan or a participant or bene-
21 ficiary of a plan by a fiduciary adviser with re-
22 spect to the plan in connection with any sale,
23 acquisition, or holding of a security or other
24 property for purposes of investment of amounts
25 held by the plan, if—

1 “(i) in the case of the initial provision
2 of the advice with regard to the security or
3 other property by the fiduciary adviser to
4 the plan, participant, or beneficiary, the fi-
5 duciary adviser provides to the recipient of
6 the advice, at a time reasonably contem-
7 poraneous with the initial provision of the
8 advice, a written notification (which may
9 consist of notification by means of elec-
10 tronic communication)—

11 “(I) of all fees or other com-
12 pensation relating to the advice that
13 the fiduciary adviser or any affiliate
14 thereof is to receive (including com-
15 pensation provided by any third
16 party) in connection with the provi-
17 sion of the advice or in connection
18 with the sale, acquisition, or holding
19 of the security or other property,

20 “(II) of any material affiliation
21 or contractual relationship of the fidu-
22 ciary adviser or affiliates thereof in
23 the security or other property,

24 “(III) of any limitation placed on
25 the scope of the investment advice to

1 be provided by the fiduciary adviser
2 with respect to any such sale, acquisi-
3 tion, or holding of a security or other
4 property,

5 “(IV) of the types of services
6 provided by the fiduciary advisor in
7 connection with the provision of in-
8 vestment advice by the fiduciary ad-
9 viser, and

10 “(V) that the adviser is acting as
11 a fiduciary of the plan in connection
12 with the provision of the advice,

13 “(ii) the fiduciary adviser provides ap-
14 propriate disclosure, in connection with the
15 sale, acquisition, or holding of the security
16 or other property, in accordance with all
17 applicable securities laws,

18 “(iii) the sale, acquisition, or holding
19 occurs solely at the direction of the recipi-
20 ent of the advice,

21 “(iv) the compensation received by the
22 fiduciary adviser and affiliates thereof in
23 connection with the sale, acquisition, or
24 holding of the security or other property is
25 reasonable, and

1 “(v) the terms of the sale, acquisition,
2 or holding of the security or other property
3 are at least as favorable to the plan as an
4 arm’s length transaction would be.

5 “(C) STANDARDS FOR PRESENTATION OF
6 INFORMATION.—The notification required to be
7 provided to participants and beneficiaries under
8 subparagraph (B)(i) shall be written in a clear
9 and conspicuous manner and in a manner cal-
10 culated to be understood by the average plan
11 participant and shall be sufficiently accurate
12 and comprehensive to reasonably apprise such
13 participants and beneficiaries of the information
14 required to be provided in the notification.

15 “(D) EXEMPTION CONDITIONED ON MAK-
16 ING REQUIRED INFORMATION AVAILABLE ANNU-
17 ALLY, ON REQUEST, AND IN THE EVENT OF MA-
18 TERIAL CHANGE.—The requirements of sub-
19 paragraph (B)(i) shall be deemed not to have
20 been met in connection with the initial or any
21 subsequent provision of advice described in sub-
22 paragraph (B) to the plan, participant, or bene-
23 ficiary if, at any time during the provision of
24 advisory services to the plan, participant, or
25 beneficiary, the fiduciary adviser fails to main-

tain the information described in subclauses (I) through (IV) of subparagraph (B)(i) in currently accurate form and in the manner required by subparagraph (C), or fails—

“(i) to provide, without charge, such currently accurate information to the recipient of the advice no less than annually,

“(ii) to make such currently accurate information available, upon request and without charge, to the recipient of the advice, or

“(iii) in the event of a material change to the information described in subclauses (I) through (IV) of subparagraph (B)(i), to provide, without charge, such currently accurate information to the recipient of the advice at a time reasonably contemporaneous to the material change in information.

“(E) MAINTENANCE FOR 6 YEARS OF EVIDENCE OF COMPLIANCE.—A fiduciary adviser referred to in subparagraph (B) who has provided advice referred to in such subparagraph shall, for a period of not less than 6 years after the provision of the advice, maintain any

1 records necessary for determining whether the
2 requirements of the preceding provisions of this
3 paragraph and of subsection (d)(16) have been
4 met. A transaction prohibited under subsection
5 (c)(1) shall not be considered to have occurred
6 solely because the records are lost or destroyed
7 prior to the end of the 6-year period due to cir-
8 cumstances beyond the control of the fiduciary
9 adviser.

10 “(F) EXEMPTION FOR PLAN SPONSOR AND
11 CERTAIN OTHER FIDUCIARIES.—A plan sponsor
12 or other person who is a fiduciary (other than
13 a fiduciary adviser) shall not be treated as fail-
14 ing to meet the requirements of this section
15 solely by reason of the provision of investment
16 advice referred to in subsection (e)(3)(B) (or
17 solely by reason of contracting for or otherwise
18 arranging for the provision of the advice), if—

19 “(i) the advice is provided by a fidu-
20 ciary adviser pursuant to an arrangement
21 between the plan sponsor or other fidu-
22 ciary and the fiduciary adviser for the pro-
23 vision by the fiduciary adviser of invest-
24 ment advice referred to in such section,

1 “(ii) the terms of the arrangement re-
2 quire compliance by the fiduciary adviser
3 with the requirements of this paragraph,

4 “(iii) the terms of the arrangement
5 include a written acknowledgment by the
6 fiduciary adviser that the fiduciary adviser
7 is a fiduciary of the plan with respect to
8 the provision of the advice, and

9 “(iv) the requirements of part 4 of
10 subtitle B of title I of the Employee Re-
11 tirement Income Security Act of 1974 are
12 met in connection with the provision of
13 such advice.

14 “(G) DEFINITIONS.—For purposes of this
15 paragraph and subsection (d)(16)—

16 “(i) FIDUCIARY ADVISER.—The term
17 ‘fiduciary adviser’ means, with respect to a
18 plan, a person who is a fiduciary of the
19 plan by reason of the provision of invest-
20 ment advice by the person to the plan or
21 to a participant or beneficiary and who
22 is—

23 “(I) registered as an investment
24 adviser under the Investment Advisers
25 Act of 1940 (15 U.S.C. 80b–1 et seq.)

1 or under the laws of the State in
2 which the fiduciary maintains its prin-
3 cipal office and place of business,

4 “(II) a bank or similar financial
5 institution referred to in subsection
6 (d)(4),

7 “(III) an insurance company
8 qualified to do business under the
9 laws of a State,

10 “(IV) a person registered as a
11 broker or dealer under the Securities
12 Exchange Act of 1934 (15 U.S.C. 78a
13 et seq.),

14 “(V) an affiliate of a person de-
15 scribed in any of subclauses (I)
16 through (IV), or

17 “(VI) an employee, agent, or reg-
18 istered representative of a person de-
19 scribed in any of subclauses (I)
20 through (V) who satisfies the require-
21 ments of applicable insurance, bank-
22 ing, and securities laws relating to the
23 provision of the advice.

24 “(ii) AFFILIATE.—The term ‘affiliate’
25 of another entity means an affiliated per-

son of the entity (as defined in section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(3))).

“(iii) REGISTERED REPRESENTATIVE.—The term ‘registered representative’ of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting the entity for the broker or dealer referred to in such section) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(17)) (substituting the entity for the investment adviser referred to in such section).”.

SEC. 3. EFFECTIVE DATE.

The amendments made by this Act shall apply with respect to advice referred to in section 3(21)(A)(ii) of the Employee Retirement Income Security Act of 1974 or

1 section 4975(e)(3)(B) of the Internal Revenue Code of
2 1986 provided on or after January 1, 2002.

Passed the House of Representatives November 15,
2001.

Attest:

JEFF TRANDAHL,
Clerk.